

1 **L. INTRODUCTORY COMMENTS**2 **RESPONSE TO EXAMINER'S ACTION OF AUGUST 16, 2000**

3 The Examiner's Action of August 16, 2000, refused entry a substitute  
4 specification filed April 11, 2000. Your applicant filed a Response on September 22,  
5 2003 comprising an Amendment of the Application for application 09/041,685, entitled A  
6 LAMINAR FLOW INTERACTIVE OR VERTICAL VORTEX BIO MEDIA WATER  
7 TREATMENT DEVICE. The Amendment to the Specification, the Amendment of the  
8 Claim and the remarks are believed responsive to the Office of Petitions re: the Dismissal  
9 of November 12, 2003 and to the Final Office Action dated August 16, 2000, to the  
10 Examiner's Advisory Action of April 16, 2003 and to comments by the Examiner during  
11 teleconferences between counsel and the Examiner. Examiner stated that the substitute  
12 specification filed April 11, 2000 was not entered because it did not conform to MPEP  
13 608.01(q) which requires the submission of a marked-up copy which shows additions to  
14 and/or deletions from the original specification and that said proffered substitute  
15 specification did not conform to 35 CFR 1.125 which requires that applicants certify that  
16 there is no new matter, and moreover, that the specification was not entered because it  
17 was deemed by the Examiner to be replete with new matter.

18 Your applicant submits the following as a Request for Continued Examination of  
19 the Amended Specification and Claims in the September 22, 2003 Response.

20

21 **AMENDMENT, SUBSTITUTION AND CLAIMS FORMAT**

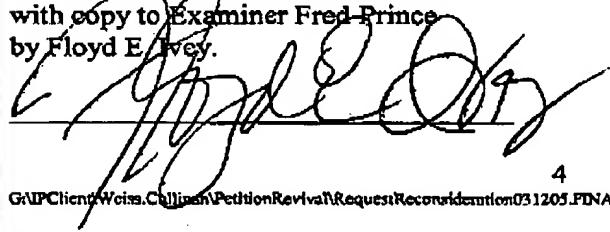
22 The amendments and substitution pages found in the September 22, 2003  
23 Response are submitted in the new format.

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26 Certificate of facsimile Official Filing  
27 on December 5, 2003 to Office of Petitions  
28 with copy to Examiner Fred Prince  
by Floyd E. Ivey.

Application No. 09/041,685



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**CERTIFICATION OF NO NEW MATTER**

2 Pursuant to 37 CFR 1.125, it is certified that no new matter has been added by the  
3 Amendments of September 22, 2003. The additional text found in the Amended  
4 Specification is drawn from a review of the drawings as originally submitted comprising  
5 Figures 1 through 11. Deriving additional description of the invention from the drawings  
6 is recognized as proper and it is contended here that no new matter has been added.

The test of the right to make counts is to be found in the total disclosure. Thus, the omission of a written description in the specification of an application will not necessarily prevent the reading of a count on a structure shown in the drawing and described in general terms in the specification. Here, the function of the disclosed structure is inherent in the structure shown in the drawings forming a part of the application. *Wooster v. Carlson*, 367 F.2d 436, 441, Cust. & Pat.App. 1966; *Carlson v. Nagata*, 480 F.2d 1372, 1375-76; Cust. & Pat.App. 1973

12 The inventors are Max V. Weiss, 407 Skidoo Bay, Polson, Mt. 59860 and Terry J.  
13  
14 Cullinan, P.O. Box 2725, Missoula, Mt. 59806 are as disclosed in the original  
15 application.

16 A new Declaration was filed March 20, 2003 in accordance with the requirements  
17  
18 of the Examiner.

19       **This REQUEST FOR CONSIDERATION OF THE DISMISSAL OF THE**  
20       **PETITION FOR REVIVAL AND REQUEST FOR CONTINUED EXAMINATION**  
21       is being filed by facsimile transmission to FACSIMILE #703-308 6916 with a copy to  
22       Examiner Prince at fax 703 872 9709; telephone number 703 306 9169.

26 Certificate of facsimile Official Filing  
27 on December 1, 2003 to Office of Petitions  
with copy to Examiner Fred Prince  
by Floyd E. Ivey.

Application No. 09/041,685

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